* **HIGH COURT OF DELHI : NEW DELHI**

\+ **W.P. (C) No. 8496/2006**

DATE OF DECISION : 14th August 2007

Sh. M.L.Dhussa ..... Petitioner
Through: Mr. K.C. Mittal, Advocate.

versus

Union of India & Ors. ..... Respondents
Through: Mr. Sameer Bajaj for Mr. Rajeeve Mehra, Advocates.

CORAM:

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

O R D E R
14.08.2007

A.K. SIKRI, J. (Oral)
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1. Petitioner is facing criminal prosecution for the alleged offense punishable under Section 7 read with section 13(1)(b) and section 13(2) of the Prevention of Corruption Act. At the relevant

time, the Petitioner was functioning as Commissioner of Income Tax (Appeals), Ludhiana. Allegations against the Petitioner is that he demanded a bribe of Rs. 5 lakhs, later reduced to Rs.3 lakhs from one Shri Mohinder Singh for favourably deciding his four appeals and with the help of his brother in law Shri Deepak Chugh accepted part payment of Rs.2.5 lakhs through a close friend P.S. Makkar. The Petitioner has been suspended from service. On the basis of investigation, charge sheet under Section 173 of the Cr.P.C. was filed sometime back and charge has already been framed. Matter is at the stage of trial and the prosecution witnesses are being examined.

2. The Petitioner is also departmentally charge sheeted on the aforesaid allegations and in the charge-sheet it is alleged that he failed to maintain absolute integrity and devotion to duty and displayed conduct unbecoming of a government servant and thereby he has contravened Rule 3(i), 3(ii) and 3(iii) of the CCS Conduct Rules, 1965. After the service of this charge-sheet the petitioner filed OA No. 1277/2004 with the prayer that the disciplinary proceedings be kept in abeyance till the completion and finalization of the criminal trial. This petition was resisted by the respondents on the ground that two proceedings were of different

nature and should go on independently. Matter was heard at length and vide judgment dated 15.12.2004 the OA was disposed of by the learned Central Administrative Tribunal, Principal Bench, New Delhi. Going through the said judgment would reveal that the Tribunal had taken note of various judgments of the Supreme Court, including the following judgments:-

1. ***Delhi Cloth and General Mills Ltd. v. Kushal Bhan***, AIR 1960 SC 806.

2. ***Kusheshwar Dubey v. Bharat Coking Coal Ltd.,*** (1988) 4 SCC 319.

3. **State of Rajasthan v. B.K. Meena & Ors.**, (1996) 6 SCC 417.

4. **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr.**, (1999) 3 SCC 679.

3. The learned Tribunal observed that in the aforesaid judgments, the Supreme Court has held that the two proceedings, namely, departmental inquiry and criminal proceedings are of different nature; the standard of proof in the two proceedings is also different and both can go on simultaneously. It is also held in these judgments that the objective in criminal proceedings and departmental proceedings is altogether different and distinct. In the disciplinary proceedings the question is whether the delinquent employee is guilty of such conduct as warrants his dismissal or

removal from service or lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offenses registered against him for which he is charged under the (Prevention of Corruption Act in the instant case) are established and if established, what sentence should be imposed upon him.

4. The Supreme Court has also repeatedly held that staying of disciplinary proceedings pending criminal proceedings should not be a matter of course but should be considered in the facts of each case. Even the stay of departmental proceedings may call for re-consideration if criminal case gets unduly delayed. After taking note of the aforesaid principles laid down in the said judgments, the learned Tribunal thought it proper to stay the departmental proceedings for a period of six months.

5. The Tribunal has specifically mentioned that this course of action is taken in view of the decision of the Supreme Court in *Capt. M. Paul Anthony* (supra). The Tribunal also extracted the relevant portion from that judgment and we consider it necessary to reproduce the same in order to understand the controversy with which we are now concerned:-

> "22. The conclusion which are deducible from various decisions of this Court referred to above are:-

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated question of law and fact, it would be desirable to stay the departmental proceeding till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offense, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found

> not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

6. The operative part of the directions, which were given by the Tribunal in the said judgment is also reproduced herein below:

> "As already pointed above, it was held that the question about gravity of the offence and whether complicated questions are involved goes with the facts and circumstances of each case. Thus, we are not expressing ourselves as to if the departmental proceedings would prejudice the applicant or not. In these circumstances, it would be in the fitness of things to stay the departmental proceedings for a period of six months only and still in terms of the decision of the Supreme Court in the case of **Capt. M. Paul Anthony's case (supra),** if the trial is not concluded in that time, the proceedings can be revived."

7. However, even after expiry of six months, the criminal trial did not conclude and some of the prosecution witnesses were yet to be examined.

8. As the period of six months had expired, apprehending that the respondent may initiate the departmental proceedings, the petitioner filed another OA being OA No.2624/2005 before the learned Tribunal seeking relief, *inter alia*, to direct the respondent to keep the disciplinary proceedings in abeyance till the decision in the criminal case is over. Vide judgment and order dated 13.12.2005

the Tribunal, however, rejected this prayer on the ground that it was barred by the principles of *res judicata* and, therefore, OA seeking this relief was not maintainable. The Tribunal observed as under:-

> "We have heard both the counsel and perused the pleadings as well. It is seen that when applicant had approached this Tribunal earlier, he had sought direction to the respondents to keep the disciplinary proceedings in abeyance till the completion and finalisation of the trial proceedings pending before the learned Special Judge. Tribunal passed a detailed judgment, wherein all the contentions raised by the applicant as well as counsel for respondents were looked into, apart from various judgments given by the Hon'ble Supreme Court, yet in their wisdom, the Tribunal stayed the departmental proceedings for a period of six months only and further observed in terms of the decision of Hon'ble Supreme Court, in the case of Capt. M. Paul Anthony, that if the trial is not concluded in that time, the proceedings can be revived. It is thus clear that liberty was given by the Tribunal itself to the respondents to revive the departmental proceedings after a period of six months. This judgment has already attained finality. Since this judgment was passed by co-ordinate Bench, we can neither sit in appeal over the orders passed by co-ordinate Bench nor can modify the same. Applicant as well as respondents are also bound by the judgment given by this Tribunal. Since it is in compliance with the directions given by this Tribunal, that respondents have revived the disciplinary proceedings after a period of six months, in these circumstances, it is neither open to the applicant to come to this court with the same request all over again nor we can give any directions contrary to the directions

> already given. Therefore, the main relief sought by the applicant in the present OA having been already decided by the Tribunal, is definitely barred by the principles of Respondent judicata, therefore, the OA is not maintainable."

9. Though with the dismissal of this OA decks were cleared for the respondent to proceed with the inquiry. the petitioner filed miscellaneous applications in O.A.No.1277/2004 seeking some further time for keeping the departmental inquiry into abeyance. These applications have also been dismissed by the learned Tribunal vide order dated 25.4.2006 taking note of the judgments of the Supreme Court, which have already been referred to above as well as another judgment, namely, *Hindustan Petroleum Corporation Ltd. And others v. Sarvesh Berry*, 2005(1) SC SLJ 188, wherein it is held that stay of departmental proceedings pending conclusion of criminal trial was not appropriate. Dismissing the applications, the Tribunal also observed that the Bench having co-ordinate jurisdiction had granted specific period of six months time for which proceedings were to remain stayed and, therefore, another Bench could not enhance the said period of stay. Challenging this order, present writ petition is filed.

10. It is contended by the learned counsel for the petitioner that the main reason for keeping the departmental inquiry in

abeyance for a period of six months by the Tribunal in its order dated 15.12.2004, was that prosecution evidence in the criminal case was underway and the intention was that the prosecution evidence is over before the departmental proceedings commence so that the petitioner is not prejudiced thereby. He submitted that there was no allegation against the petitioner that criminal proceedings had been delayed because of the non-cooperation of the petitioner and rather the delay was attributable to the prosecution. He also pointed out that out of 30, 20 prosecution witnesses had already been examined, 2 had been dropped and only 8 witnesses remained to be examined and if the inquiry is kept in abeyance for some more period, the purpose and spirit behind the order dated 15.12.2004, by which the proceedings were stayed for six months, would be fulfilled.

11. Learned counsel for the respondent, on the other hand, submitted that the Tribunal in its order dated 15.12.2004 stayed the proceedings for a period of six months only specifically stating that it was in terms of the decision of the Supreme Court in the case of *Capt. M. Paul Anthony* (supra) and also made categorical observation that if the trial is not concluded in time, the proceedings can be revived. Therefore, submitted the learned

counsel, the period of six months was not given for the purpose of concluding the criminal trial, inasmuch as, there is no indication of this kind of reason in the impugned order, as contended by the counsel for the petitioner now. He further submitted that in *Capt. M. Paul Anthony* (supra), it is specifically provided by the Supreme Court that in case criminal proceedings are unduly delayed, departmental proceedings can be resumed. He also argued that the facts of this case are para materia with the case of *Sarvesh Berry* (supra), which was specifically taken note of while rejecting the prayer of the petitioner that keeping the inquiry in abeyance and dismissing the OA and, therefore, following that predence the writ petition be dismissed.

12. We have given our due consideration to the respective submissions and have also gone through the record. The proposition of law and the principles laid down in various judgments of the Supreme Court on this subject have been discussed by the Tribunal in its judgment dated 15.12.2004, as already noted above and, therefore, it does not need any repetition. We have also pointed out above that the Tribunal thought it proper to keep the departmental proceedings in abeyance for a period of six months keeping in view the terms of decision of the Supreme Court in *Capt.*

M. Paul Anthony (supra). We have reproduced the relevant observations in the said decision above. However, we would like to extract the conclusion Nos.4 and 5 of para 22 again, which touch this aspect specifically:-

> "22. The conclusions which are deducible from various decisions of this Court referred to above are:
>
> (i) xxxxx
>
> (ii) xxxxx
>
> (iii) xxxxx
>
> (iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.
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> (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

13. It can, therefore, be safely inferred that it was because of the aforesaid consideration the Tribunal though it proper that departmental proceedings be kept in abeyance for a period of six

months and it was in the mind of the Tribunal that even if the criminal proceedings are not concluded within the aforesaid period, the departmental proceedings can still be resumed. Because of this reason while staying the proceedings for six months, the emphasis for this period was given using the expression "only" and also making it abundantly clear that "If the trial is not concluded in that time, the proceedings can be revived." Not only this, when the petitioner filed second OA, this prayer in OA was rejected on the ground that it is barred by principles of *res judicata* and the OA was not maintainable. Thus, the Tribunal refused to entertain the plea of the petitioner to the effect that the disciplinary proceedings be kept in abeyance till the offence in criminal case is over. This order was not challenged by the petitioner and instead he filed miscellaneous application whereby he sought extension of time to keep the departmental proceedings in abeyance.

14. We are, therefore, of the opinion that miscellaneous application filed by the petitioner before the Tribunal have rightly been rejected and there is no scope of interference with the orders of the Tribunal. It would be relevant to point out here that on 15.12.2004 departmental proceedings were stayed for a period of six months. The period of almost 20 months have expired since

then and the proceedings have not commenced since this Court had also granted a stay of the enquiry proceedings in these proceedings on 16.5.2006, which has been continuing ever since. Therefore, we do not find it to be a fit case for exercise of extraordinary jurisdiction under Article 226 of the Constitution of India as we do not find any irrationality, illegality and impropriety in the impugned order. This petition is dismissed and interim orders are vacated.

Petition stands disposed of.

A.K.SIKRI, J.

VIPIN SANGHI, J.

August 14, 2007
P.K. BABBAR